

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JACKIE NELSON

Claimant

VS.

DELBERT CROWL COMPANY, INC

Respondent

AND

COMMERCIAL UNION INSURANCE

Insurance Carrier

Docket No. 190,485

ORDER

ON the 27th day of September, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Nelsonna Potts Barnes, dated August 2, 1994, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through her attorney, Robert R. Lee of Wichita, Kansas. The respondent and insurance carrier appeared by and through their attorney, Kendall R. Cunningham of Wichita, Kansas. There were no other appearances.

RECORD

The record in this docketed matter consists of the documents of record filed with the Division of Workers Compensation including the transcript of preliminary hearing held before Administrative Law Judge Nelsonna Potts Barnes on July 28, 1994 and the exhibits attached thereto.

ISSUES

- (1) Whether claimant suffered compensable injury by accident on the date alleged.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment.
- (3) Whether claimant is entitled to temporary total disability benefits as a result of an alleged injury between March 15, 1994 and May 17, 1994.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds:

Claimant has failed to prove by a preponderance of the credible evidence that he suffered an accidental injury arising out of and in the course of his employment with the respondent on the dates alleged.

Claimant worked for the respondent as an installer of heating and air conditioning units for several months prior to the alleged date of injury. While claimant testified to having ongoing problems with his back and the medical reports support claimant's comments that he had suffered back problems for as much as ten years, there was never an indication in the record that claimant advised the respondent or any representative of respondent of his ongoing alleged back problems.

On the morning of May 18, 1994, claimant, after preparing for work, and while drinking coffee with his wife, sneezed. He immediately felt something pop in his back and as the day progressed his back condition became worse and worse to the point where he was forced to obtain medical treatment. Claimant was unable to return to work with the respondent subsequent to that date.

Numerous medical records were placed into evidence indicating claimant injured himself while sneezing or coughing at home. There are no medical records in evidence

to support claimant's contention that he suffered any type of work related injury prior to the sneezing incident. The medical reports do indicate claimant had a long history of back problems but do not contain any mention that his work with respondent was a causal factor.

K.S.A. 44-501(a) requires that, in order to be compensable, an employee's injury must arise out of and in the course of employment with the respondent. It further requires that in proceedings under the workers compensation act the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. This burden must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Company, 236 Kan.

237, 689 P.2d 871 (1984). This record is void of medical evidence supporting claimant's contention that he injured himself at work. Numerous documents in evidence indicate claimant injured himself at home. This, coupled with claimant's failure to advise the respondent at any time prior to the sneezing incident of any current back problems suffered at work, convinces the Appeals Board that is more probably true than not true that the claimant's act of sneezing at home is the cause of claimant's current physical problems. Therefore, the Appeals Board finds that the incident in question is not related to claimant's work duties, did not arise out of and in the course of his employment, and is therefore non-compensable.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board for preliminary hearing purposes, that claimant has not met his burden of establishing a compensable injury arising out of and in the course of his employment with the respondent. The Order of Administrative Law Judge Nelsonna Potts Barnes dated August 2, 1994, is reversed.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Robert R. Lee, Attorney at Law, 1861 N. Rock Road, Suite 320, Wichita, KS
67206
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Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director